

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: October 13, 2004

TO : Stephen Glasser, Regional Director
Region 7

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Local 155, UAW
(Detroit Heading LLC) 536-2572
Case 7-CB-14350 536-2581-3307-5010
548-4020-4000
548-4020-6000
548-6040-2500
548-6050-6767

This case was submitted for advice as to whether the Union violated Section 8(b)(2) by maintaining a facially unlawful union-security clause. We conclude that the charge allegation should be dismissed, absent withdrawal, because the union-security clause does not require more than "financial core" membership.

FACTS

Detroit Heading LLC (the Employer) manufactures fasteners, such as bolts and screws, primarily for automakers. Auto Workers Local 155 (the Union) has represented employees at the Employer's Lynch Road facility since March 2002.

The Employer and Union began bargaining for a contract in about September 2002. Around June 2003, the Employer made its final bargaining offer to the Union. The Union membership rejected the Employer's offer during each of three ratification votes.¹

On November 21, 2003, the Employer implemented its final offer, embodying those terms that had been mutually agreed on by the parties. The unilaterally implemented offer contains a union-security clause, which reads, in pertinent part:

2. The current employees covered by this agreement shall be required, as a condition of employment, to become and remain members of the union in good

¹ The Union's constitution requires membership ratification of contracts.

standing during the term of this Agreement. All current employees shall make application for membership in the Union within thirty (30) calendar days following the effective date of this agreement.

3. For the purpose of this Agreement, an employee shall be considered a member of the Union in good standing if they tender the periodic dues and initiation fees required as a condition of membership.

4. All future employees covered by this agreement shall be required, as a condition of employment, to become and remain members of the Union in good standing during the term of this Agreement. All future employees shall make application for membership in the Union no later than the completion of their 30th calendar day of employment....

Sometime in January 2004, the Union began soliciting unit employees' signatures on dues deduction authorization cards. The Union has not solicited Union membership cards, nor has it sought the discharge of any employee for not signing a membership card. In February 2004, the Union posted a notice in the plant indicating that, effective March 1, 2004, "all Union members will be paying Union dues." On about March 10, 2004, the Employer started deducting monies from employees' paychecks and remitting these monies to the Union.

ACTION

We conclude that the union-security clause is facially lawful. Although the union-security clause requires employees to "make application for membership," rather than simply to "become members," the clause also states that membership equals the payment of periodic dues and fees. Thus, the union-security clause does not require more than "financial core" membership. Accordingly, the allegation that the union-security clause is facially unlawful should be dismissed, absent withdrawal.

A union does not violate its duty of fair representation by negotiating a union-security clause that tracks the "membership" language of Section 8(a)(3) without explaining, in the agreement, that formal union membership cannot be required.² By tracking the statutory "membership" language, a union-security clause incorporates all of the refinements and rights that have become associated with the

² Marquez v. Screen Actors Guild, 525 U.S. 33, 44 (1998).

language of Section 8(a)(3) under General Motors³ and Beck.⁴ This rationale applies even where the clause requires "membership in good standing."⁵

Several Board decisions have applied the Supreme Court's decision in Marquez and found that union-security clauses requiring employees to "become members" in good standing are lawful.⁶ However, research has uncovered no Board decisions assessing the facial validity of a union-security clause requiring employees to "apply" or "make application" for membership.

The Board has addressed the legality of a union's oral statement to employees that they must complete a union membership application as a condition of employment. In United Stanford Employees, the Board found that a union violated the Act when it told employees that a union-security provision required them to join the union, which meant filling out a membership application card and taking an oath of membership, in addition to the payment of dues and fees.⁷ The Board did not find the underlying union-security clause to be facially unlawful, but the union's statements to employees "made clear that it considered the contractual union-security provisions to require full membership rather than 'financial core membership' as defined by the Supreme Court...."⁸ In finding that the union's statements implied that employment was conditioned

³ NLRB v. General Motors Corp., 373 U.S. 734 (1963) (bargaining unit employees have right to be and remain nonmembers; the only "membership" unions can require is the payment of fees and dues).

⁴ Communications Workers v. Beck, 487 U.S. 735 (1988) (unions may collect and expend funds over the objection of nonmembers only to the extent they are used for collective bargaining, contract administration, and grievance adjustment).

⁵ Marquez v. Screen Actors Guild, 525 U.S. at 44.

⁶ See, e.g., Assn. for Retarded Citizens (Opportunities Unlimited), 327 NLRB 463, 465 (1999); Paperworkers Local 987 (Sun Chemical Corp. of Michigan), 327 NLRB 1011, 1011-12 (1999).

⁷ United Stanford Employees, Local 680 (Leland Stanford Junior University), 232 NLRB 326 (1977), enfd. 601 F.2d 980 (9th Cir. 1979).

⁸ Id. at 326, fn. 1.

on "full membership," the Board did not delineate between the "oath" requirement and the "application" requirement. Because a membership oath clearly implies "full membership," it is not clear whether the Board would have found a violation had the union required membership applications but no membership oath.

In any event, the "make application for membership" language in the instant union-security clause does not imply full membership when read in context with the language in Paragraph 3 that defines membership as "tender[ing] the periodic dues and initiation fees required as a condition of membership." Thus, the union-security clause can reasonably be read to simply require that employees make application to pay fees and dues.⁹ Furthermore, Paragraph 3's definition of "membership" provides a more accurate description of employees' legal rights and obligations under a union-security clause than did the clause that was ruled lawful in Marquez.

Moreover, the Board does "not assume that unions and employers will violate a federal law...against a clear command of this Act of Congress."¹⁰ Therefore, in the absence of provisions calling explicitly for illegal conduct, a contract will not be held illegal merely because it failed affirmatively to disclaim all illegal objectives.¹¹ Where contract language is ambiguous, the Board looks to the intent of the parties when the contract was drafted and to their practice in operating under the contract.¹² There is no evidence in this case that the union-security clause was drafted with an illegal objective, and the Union has neither solicited full

⁹ Cf. Group Health, Inc., 323 NLRB 251, 254 (1997) (to the extent the Eight Circuit viewed union-security clause's "membership in good standing" language to be misleading, subsequent revisions to the clause stating that membership is only required to the extent employees must pay periodic dues and initiation fees "serves to alert the employees to the fact that something other than full union membership is required....").

¹⁰ Paragon Products Corp., 134 NLRB 662, 664 (1961), quoting NLRB v. News Syndicate Company, 365 U.S. 695 (1961).

¹¹ Ibid.

¹² McLean County Roofing, 290 NLRB 685, 692 (1988), citing Kaiser Aluminum & Chemical Corp., 98 NLRB 753 (1952) and Bath Iron Works Corp., 101 NLRB 849 (1952).

membership from employees nor sought the discharge of any employee who has not become a full member.

Accordingly, the allegation that the union-security clause is facially unlawful should be dismissed, absent withdrawal.¹³

B.J.K.

¹³ [*FOIA Exemption 5*